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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1996

RONALD AND ANISSA COULTER, et al.,
Petitioners,

SHERRY HORTON, et al.,
Plaintiffs-Respondents,

—v—

METROPOLITAN LIFE INSURANCE COMPANY,
Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

REPLY BRIEF OF PETITIONERS TO BRIEF IN OPPOSITION OF PLAINTIFFS-RESPONDENTS

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The brief in opposition of plaintiffs-respondents mischaracterizes and misrepresents the motives of petitioners and the course of events in this case.

In the interest of brevity, only a few such examples will be discussed in this reply brief. Perhaps the fundamental problem is the respondents' failure to grasp the significance of the McCarran-Ferguson Act. This is brought out sharply by the following statement on Page 9 in the brief in opposition:.

> That Act is directed to conflicts between state law and Acts of Congress....

This is a total misrepresentation of the McCarran-Ferguson Act. The Act is not simply a mere guide to construing statutes; it is a delegation by the Congress to the states of its constitutional power to regulate the business of insurance. The question presented is whether the federal courts may nullify state laws enacted to implement this delegated power. This is an important question of federal law that has not been, but should be, resolved by this Honorable Court. Therefore, the informative guidance of Supreme Court Rule 10 is eminently satisfied, contrary to the attempt by plaintiffs-respondents to obfuscate the matter by means of a procedural fog.

The plain facts of this case are that:

1. Against their will, the petitioners were placed in a plaintiff class in which they did not belong because they had known that a component of the products they purchased was life insurance. A form of notice was mailed out but it did not notify anyone in the United States, including petitioners, that they were class members (see petitioners' app. 39a)

2. Against their will, the petitioners were not permitted to name a class representative or a class co-counsel and thus were completely shut out of negotiations. It should be noted that the settlement called for payment of an attorneys fee to class counsel of $2,750,000.00, which perhaps accounts for their lack of objectivitity in interpreting rules, statutes, judicial decisions, and

events related to this case.

3. Against petitioners' will, the class representatives and the class counsel negotiated a settlement which bargained away petitioners' rights under Pennsylvania law and granted them no benefits in return because they could not certify that they had not known they were buying life insurance.

4. Against petitioners' will, a nationwide injunction was issued by a federal district court in Tampa, Florida purporting to prohibit petitioners from pursuing their rights in any other forum.

On top of all this, the brief in opposition for plaintiffs-respondents now claims that the petitioners have no standing to ask the Supreme Court to review this kind of treatment by the federal courts.

If this viewpoint were followed, there would be no justice for the petitioners anywhere in this land, and the Supreme Court would be powerless to rectify such an abuse of the federal judicial system.

The specific key words of Supreme Court Rule 10 are:

> ...a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court...

which is one of the indicators listed as among those factors that "indicate the character of the reasons the Court considers".

The respondents completely misrepresent the gist of Supreme Court Rule 10, which clearly embraces the instant case.

On page 10, respondents assert that:

> "This Petition is pursued for the individual benefits of the Petitioners, who did not timely opt out of the settlement in order to pursue individual claims."

In the first place, petitioners made it abundantly clear to both the district court and the negotiating parties that petitioners did not want to be part of the main **Horton** plaintiff class and wanted to be severed or placed in a separate subclass so that their claims of improper sales practices in Pennsylvania could be resolved by the application of Pennsylvania law.

In the second place, the settlement and Claim Form approved by the district court excluded petitioners from class membership and any benefits of the settlement. This was because the types of improper sales practices in Pennsylvania were distinctly different from those in Florida. A prerequisite to class membership and collecting benefits as a member of the **Horton** class was a certification that the claimant was unaware that the product was insurance. Pennsylvania claimants could not make such a certification since part of the misrepresentations made to them was that insurance was a "component" of the product. How does one opt out of a class to which he has never belonged by definition or by eligibility for benefits?

All of the above demonstrates that respondents' mischaracterization lacks any legal or equitable foundation.

At pages 23-24, respondents assert that

> ...nor has the court's approval of the settlement of this case in any way infringed upon the states' ability to regulate insurance practices.

Respondents conveniently omit any reference to the nationwide injunction issued by the district court which purports to prohibit petitioners from invoking in their state courts the full panoply of insurance regulatory powers, both inherent and delegated by the Congress, held by their sovereign state of Pennsylvania. Respondents' assertions are entitled to no weight whatsoever.

The respondents are in error when, at page 8 of their brief in opposition, they assert that, because the petitioners are not named parties to the **Horton** class action suit, they lack standing to seek review.

It is instructive on this point to note **United Airlines, Inc. v. McDonald**, 432 U.S. 385, 97 S.Ct. 2464, 53 L.Ed. 2d 423 (1977), which held that an unnamed absentee plaintiff class member in a Federal class action suit had timely filed a petition to intervene 18 days after the entry of final judgment by the U.S. district court.

The majority opinion stated, 431 U.S. at page 392, that:

> ...it would be circular to argue that unnamed member of the putative class was not a proper party to appeal...

Respondents compound their fallacious and distorted misinterpretation of petitioners' position at page 26, as follows:

> Petitioners seek to rely upon this Court's emphasis in **Seminole Tribe** that the sovereignty of the states must be maintained and generically apply that emphasis to its argument that state sovereignty has been usurped by the Florida district court in violation of the McCarran-Ferguson Act. The **Seminole Tribe** decision and the case herein are not comparable. Petitioners mistakenly believe that the court's application of a Federal Rule of Civil Procedure can be violative of the McCarran-Ferguson Act.... The Act is directed to conflicts between state and federal law (Acts of Congress) as to the business of insurance and the preemptiveness of federal law under those circumstances.

This is a blatant misinterpretation of the McCarran-Ferguson Act, which says nothing about the preemptiveness of federal law under any circumstances.

The truth is that the McCarran-Ferguson Act is oriented against federal preemptiveness by an Act of Congress let alone by a Federal Rule of Civil Procedure.

At page 27, respondents come right out and say it:

> The district court herein considered federal principles governing approval of class action settlement, not the assessment of specific damages under Florida or any other state law.

Thereby, respondents explicitly admit that the district court completely junked state sovereignty and the McCarran-Ferguson Act's mandate to apply state law and instead applied a federal procedural rule.

CONCLUSION

The brief in opposition of the plaintiffs-respondents mischaracterizes the motives of the petitioners; misconstrues the

relevant rules, statutes, and judicial decisions; misinterprets the course of events in the courts below and arrives at predictably erroneous conclusions. The petition for a writ of certiorari raises the important question as to whether compliance with federal procedural rules relieves federal courts from applying any state laws at all, particularly in regard to improper practices carried on in the business of insurance; the petition for a writ of certiorari should be granted.

Respectfully submitted,

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